IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9348 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK BIJALBHAI BABAR

Versus

STATE OF GUJARAT

Appearance:

MS DR KACHCHHVA FOR MR DP KINARIWALA for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.D.R.Kachchhva for Mr.D.P.Kinariwala on behalf of the petitioner and Mr.A. J. Desai, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 10-6-1999 passed by respondent No. 2 - The District Collector, Bhavnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicate that in all 6 criminal cases for the offence made punishable under Section 379 are registered against the petitioner in between 27-11-97 to 15-4-1999 at "A" Division Bhavnagar Police Station. That five cases are pending for trial whiled the other two cases registered vide C.R. No : 422/99 and 218/99 are pending for further investigation. Apart from that, four witnesses on assurance of their anonymity have given statement dated 2-6-1999 in respect to alleged anti social activities of the petitioner. That on the basis of the said material, the respondent No. 2 as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been submitted at bar on behalf of the petitioner that the impugned order is bad on account of non application of mind inasmuch as the aspect of cancellation of bail available under Section 437(5) of CrPC has not been considered before passing the impugned order.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it

appears that though the petitioner is released on bail in all the cases, the detaining authority has failed to record the said fact in the grounds of detention and has also failed to disclose any reason as to why any attempt for claiming cancellation of bail in cases pending for trial before the Court, has not been made before passing the impugned order. That despite service of rule, none of the respondents has filed any affidavit and as such in the absence of any explanation either in the affidavit or in the grounds of detention, there is non application of mind so far as the said aspect is concerned and as such, the impugned order cannot be sustained.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 10-6-99 passed by respondent No. 2 - The District Collector, Bhavnagar against the petitioner is hereby quashed and set aside. The petitioner - ASHOK BIJALBHAI BABAR is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 21-2-2000 [A.K.Trivedi, J.]

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